

May 23, 2012

Hon. Andrew S. Hanen  
United States District Clerk's Office  
United States Courthouse  
600 East Harrison Street, Suite 101  
Brownsville, Texas 78520

Re: Cause No. 1:08-CV-446; *United States of America, ex rel. Michael N. Swetnam, Jr. v. Valley Baptist Health System and Valley Baptist Medical Center*; In the United States District Court for the Southern District of Texas, Brownsville Division.

Dear Judge Hanen:

Attached hereto as Exhibit A is a copy of the District of Columbia Circuit's recent opinion in *United States ex rel. Davis v. Dist. of Columbia*, No. 11-7039, 2012 WL 1673655 (D.D.C. May 15, 2012) regarding the issue of public disclosure and whether a relator is an "original source" of information under the False Claims Act ("FCA"). As the Court will recall, Defendants' argue in their pending motion for summary judgment that Plaintiff was not an original source of the information upon which the claims in this case are based. Although Plaintiff is confident that his prior briefing conclusively establishes that there was no public disclosure and that he was an original source, the D.C. Circuit's decision in *Davis* completely forecloses any argument to the contrary.

In short, the *Davis* Court held that under the FCA, a relator is not required to provide information to the government prior to any public disclosure of allegations substantially similar to the relator's, but instead must provide the information only before an action is filed. *See Davis*, 2012 WL 1673655, at \* 6. In doing so, the Court recognized that a relator "may have an eyewitness account or important documents supporting the public allegation, but not available from any other source, which could aid the government." *Id.* at \*5. Here, there is no dispute that Plaintiff provided his information regarding Defendants' violations of the FCA to the government well in advance of this suit being filed. Accordingly, even if there was a prior public disclosure of any information upon which these claims are based (which Plaintiff's previously filed briefing establishes there was not), Plaintiff would still be an original source of the information under *Davis* because he provided the information prior to suit being filed.

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Should you have any questions regarding *Davis* or any other issue in the case, Plaintiff is at the Court's disposal. Thank you for the opportunity to notify the Court about this additional authority.

Sincerely,



Mikal C. Watts  
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MCW:ccp  
Attachment

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